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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/277,373 03/29/99 IMAI

M 103014

EXAMINER

TM02/1024

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KENDALL, C

ART UNIT

PAPER NUMBER

2122

DATE MAILED:

10/24/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Office Action Summary

Application No.

09/277,373

Applicant(s)

IMAI, MASAOKI

Examiner

Chuck O Kendall

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 1999.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

1. This action is in response to the application filed 03/29/99

Claims 1-16 have been examined.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-8,10,and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Fletcher et al. USPN 6,009,274 hereinafter Fletcher.

Claim 1.

Fletcher anticipates a program rewriting device comprising a transmission unit that performs transmission and reception of data over a network to and from another device and other devices connected to the network a memory that stores a software program;

a type judgement unit that judges whether another device stores, in a rewritable manner. the same type of software program as the software program stored in the memory;

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[Fletcher 6: 38-50]

an old/new judgement unit that, when the type judgement unit judges that the another device stores the same type of software program in a rewritable manger, judges which of the same type of software program stored in the another device and the software program stored in the memory is older; and [Fletcher 5: 62-67, 6: 38-50 also *see abstract*].

a first rewrite unit that, when the new/old judgement unit judges that the same type of software program stored in the another device is older than the software stored in the memory, rewrites the same type of software program stored in the another device in the manner of the software program stored in the memory.

[Fletcher 5: 62-67, 6: 38-50 also *see abstract*].

Claim 2.

A program rewriting device as claimed in claim 1, wherein the memory stores the software program in a rewritable manner, and further comprising a second rewrite unit that, when the old/new judgement unit judges that the same type of software program stored in the another device is newer than the software stored in the memory, rewrites the software program stored in the memory in the manner of the same type of software program stored in the another device. [Fletcher 6: 38-50 for first and second rewrite unit see request generator and updating mechanism].

Claim 3.

A program rewriting device as claimed in claim 1, wherein the type Judgement unit performs judgement for all other devices connected to the network: [Fletcher 5: 48-67].

and the old/new judgement unit performs judgement on all other devices that are judged to store the same type of software program by the type judgement unit. [Fletcher 5: 48-67].

Claim 4.

A program rewriting device comprising:

a transmission unit that performs transmission and reception of data over a network to and from another device and other devices connected to the network; [Fletcher 6: 20-35,11: 50-60].

a memory that stores a software program in a rewritable manner; [Fletcher 6: 43-46].

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a type judgement unit that judges whether the another device stores the same type of software program as the software program stored in the memory; [Fletcher 5: 48-67].

an old/new judgement unit that, when the type judgement unit judges that the another device stores the same type of software program, judges which of the same type of software program stored in the another device and the software program stored in the memory is newer; [Fletcher 5: 48-67].

and a rewrite unit that, when the old/new judgement unit Judges that the same type of software program stored in the another device is newer than the software stored in the memory. rewrites the software program stored in the memory in the manner of the same type of software program stored in the another device. [Fletcher 5: 48-67].

Claim 5.

A program rewriting device as claimed in claim Wherein the type judgement unit perform judgement for all other devices connected to the network; and

the old/new judgement unit performs judgement on all other devices that are judged to store the same type software program by the type judgement unit. [Fletcher 5: 48-67, 5: 62-67, 6: 38-50]

Claim 6.

A network system comprising a networks a program rewriting device connected to the network:

another device connected to the network and having a memory that stores, in a rewritable manner, a software program and other devices connected to the network, each having a memory that stores, in a rewritable manner, a software program, wherein the program rewriting device comprising a transmission unit that performs transmission and reception of data over a network to and from the another device and all other devices connected to the network; [Fletcher 5: 48-67, 5: 62-67, 6: 38-50]

a memory that stores a software program;

[6: 38-50, see memory for storing agent update, also for memory see, 11: 50-60].

a type judgement unit that judges whether the another device stores the same type of software program as the software program stored in the memory of the program rewriting device;

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an old/new judgement unit that, when the type judgement unit judges that the another device stores the same type of software program in a rewritable manner, judges which of the same type of software program stored in the another device and the software program stored in the memory of the program rewriting device is older; and

[Fletcher 5: 48-67, 5: 62-67, 6: 38-50]

a first rewrite unit that, when the old/new judgement unit judges that the same type of software program stored in the another device is older than the software program stored in the memory of the program rewriting device, rewrites the same type of software program stored in the another device in the manner of the software program stored in the memory of the program rewriting device.

[Fletcher 5: 48-67, 5: 62-67, 6: 38-50]

Claim 7.

The network system as claimed in claim 6, wherein the memory stores the software program in a rewritable manner, and further comprising a second rewrite unit that, when the old/new judgement unit judges that the same type of software program stored in the another device is newer than the software program stored in the memory of the program rewriting device, rewrites the software program stored in the memory of the program rewriting device in the manner of the same type of software program stored in the another device.

[Fletcher 5: 48-67, 5: 62-67, 6: 38-50]

Claim 8.

The network system as claimed in claim 6, wherein the type judgement unit performs judgement for all other devices connected to the network; [Fletcher 5: 48-67, 5: 62-67, 6: 38-50]

and the old/new judgement unit performs judgement on all other devices that are judged to store the same type software program by the type judgement unit. [Fletcher 5: 48-67, 5: 62-67, 6: 38-50, and abstract, see identifying feature]

Claim 10.

A network system comprising;

a network;

[Fletcher, abstract].

a program rewriting device connected to the network; [abstract].

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another device connected to the network and having a memory that stores, in a rewritable manner, a software program; and [Fletcher 6: 38-50 for first and second rewrite unit see request generator and updating mechanism].

other devices connected to the network, each having a memory that stores, in a rewritable manner, a software program, [Fletcher 6: 38-50].

wherein the program rewriting device comprising:

a transmission unit that performs transmission and reception of data over a network to and from the another device and all other devices connected to the network; [Fletcher 6: 20-35, 11: 50-60].

a memory that stores a software program in a rewritable manner;

a type judgement unit that judges whether the another device stores the same type of software program as the software program stored in the memory of the program rewriting device; [Fletcher 5: 48-67, 5: 62-67, 6: 38-50]

an old/new judgement unit that, when the type judgement unit judges that the another device stores the same type of software program, judges which of the same type of software program stored in the another device and the software program stored in the memory of the program rewriting device is newer; [Fletcher 5: 48-67, 5: 62-67, 6: 38-50]

a first rewrite unit that, when the old/new judgement unit judges that the same type of software program stored in the memory of the another device is older than the software stored in the memory of the program rewriting device, rewrites the same type of software program stored in the memory of the another device in the manner of the software program stored in the memory of the program rewriting device, and a second rewrite unit that, when the old/new judgement unit judges that the same type of software program stored in the memory of the another device is newer than the software stored in the memory of the program rewriting device, rewrites the software program stored in the memory of the program rewriting device in the manner of the same type of software program stored in the memory of the another device. [Fletcher 5: 48-67, 5: 62-67, 6: 38-50]

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Claim 11.

The network system as claimed in claim 10, wherein the type judgement unit performs judgement for all other devices connected to the network, and the old/new judgement unit performs judgement on all other devices that are judged to store the same type of software program by the type judgement unit. [Fletcher 5: 48-67, 5: 62-67, 6: 38-50]

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Furner et al. USPN 5,974,474 as applied in claim 6 hereinafter Furner.

Claim 9.

Fletcher discloses all the limitations as applied in claim 6. Fletcher does not explicitly disclose the another device includes a rewrite prevention unit. However, Furner does disclose using a floppy disk to load drivers, and floppy's have an overwrite prevention tab feature, which serves the same function as the rewrite prevention unit, as disclosed. [Furner 3: 45-50]. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fletcher and Furner because, preventing rewriting of programs or software prevents loss of needed information.

Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fletcher et al. USPN 6,009,274 hereinafter Fletcher.

Claim 12.

Fletcher discloses, a memory medium with a first program of judging whether a device connected to a network store in a rewritable/updating manner, the same type of software program as a software program stored in a reference memory connected to the network a second program of judging which of the same type of software program stored in the device and the software program stored in the reference memory is older when the device is judged to store the same type of software programming a re-writable manner: and [Fletcher 5: 48-67, 5: 62-67, 6: 38-50].

Fletcher does not explicitly disclose using a third program. However, Fletcher does disclose features which perform the same functionality as the third program disclosed in the invention. [Fletcher 6: 38-50 for first and second rewrite unit see request generator and updating mechanism]. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fletcher with the feature discussed in the application because, it serves the same function and is merely a design choice.

Claim 13.

Fletcher discloses, a memory medium with a first program of judging whether a device connected to a network store in a rewritable/updating manner, the same type of software program as a software program stored in a reference memory connected to the network a second program of judging which of the same type of software program stored in the device and the software program stored in the reference memory is older when the device is judged to store the same type of software programming a re-writable manner: and [Fletcher 5: 48-67, 5: 62-67, 6: 38-50]. Fletcher does not explicitly disclose using a third program. However, Fletcher does disclose features which perform the same functionality as the fourth program disclosed in the invention.

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[Fletcher 6: 38-50 for first and second rewrite unit see request generator and updating mechanism]. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fletcher with the feature discussed in the application because, it serves the same function and is merely a design choice.

Claim 14.

Per claim 12, wherein the first program judges for all other devices connected to the network:

and the second program performs judgement on all other devices that are judged to store the same type software program by the first program. [Fletcher 5: 48-67, 6: 38-50 also *see abstract*].

Claim 15.

Per claim 12, a memory medium storing programs comprising;

a first program of judging whether a device connected to the network stores the same type of software program as a software program stored in a reference memory;

[Fletcher 5: 48-67]

a second program of judging which of the same type of software program stored in the device and the software program stored in the reference memory is newer when the first program judges that the device stores the same type of software programs; and [6: 38-50 also *see abstract*].

a third program of rewriting the software program stored in the reference memory in the manner of the same type of software program stored in the device when the second program judges that the same type of software program stored in the device is newer than the software stored in the reference memory.

[Fletcher 6: 38-50 for first and second rewrite unit see request generator and updating mechanism].

Claim 16.

The memory medium as claimed in claim 15, wherein the first program performs judgement for all other devices connected to the network, the second program performs

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judgement on all other devices that are judged to store the same type software program by the first program made. [Fletcher 5: 48-67, 6: 38-50]

Conclusion

Examiner would like to point out that the limitations cited in Claims are very much similar in context and functionality and therefore have been rejected using similar paragraphs as cited above from the prior art. In several claims no distinction in functionality has been made to further limit the preceding claims and therefore claim language has been disputed using similar paragraphs.

Correspondence Information

Any inquiries concerning this communication or earlier communications from the examiner should be directed to *Chuck O. Kendall* who may be reached via telephone at (703) 308-6608. The examiner can normally be reached Monday through Friday between 8:00 A.M. and 5:00 P.M. est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Kevin Teska* may be reached at (703) 305-9704.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

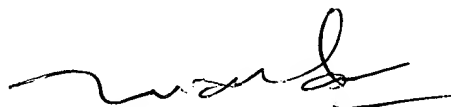
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Chuck D. Kendall

*Software Engineer Patent Examiner
United States Department of Commerce*

A handwritten signature in black ink, appearing to read 'Tuan Q. Dam', with a horizontal line extending to the right.

TUAN Q. DAM
PRIMARY EXAMINER